

112TH CONGRESS  
1ST SESSION

# H. R. 2273

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2011

Mr. MCKINLEY (for himself, Mr. WHITFIELD, Mr. RAHALL, Mrs. CAPITO, Mrs. MYRICK, Mr. OLSON, Mrs. LUMMIS, Mr. ROSS of Florida, Mr. BARTON of Texas, Mr. JOHNSON of Ohio, Mr. PITTS, Mr. ROGERS of Kentucky, Mrs. McMORRIS RODGERS, Mr. WOMACK, Mr. SULLIVAN, Mr. PALAZZO, and Mr. BUCSHON) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coal Residuals Reuse  
5 and Management Act”.

1 **SEC. 2. AMENDMENT TO SUBTITLE D OF THE SOLID WASTE**  
2 **DISPOSAL ACT.**

3 Subtitle D of the Solid Waste Disposal Act (42  
4 U.S.C. 6941 et seq.) is amended by adding at the end  
5 the following new section:

6 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**  
7 **BUSTION RESIDUALS.**

8 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-  
9 TION RESIDUALS.—Each State may adopt and implement  
10 a coal combustion residuals permit program.

11 “(b) STATE ACTIONS.—

12 “(1) NOTIFICATION.—Not later than 6 months  
13 after the date of enactment of this section (except  
14 as provided by the deadline identified under sub-  
15 section (d)(2)(B)), the Governor of each State shall  
16 notify the Administrator, in writing, whether such  
17 State will adopt and implement a coal combustion  
18 residuals permit program.

19 “(2) CERTIFICATION.—Not later than 36  
20 months after the date of enactment of this section  
21 (except as provided in subsections (f)(1)(A) and  
22 (f)(1)(C)), the Governor of each State that has noti-  
23 fied the Administrator that the State will adopt and  
24 implement a coal combustion residuals permit pro-  
25 gram shall submit to the Administrator, in writing,  
26 a certification that such State coal combustion re-

1       iduals permit program meets the specifications de-  
2       scribed in subsection (c).

3               “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-  
4       GRAM.—Solely for the purpose of demonstrating  
5       competence under this Act to adopt or implement a  
6       coal combustion residuals permit program under this  
7       section (including pursuant to subsection (f)), the  
8       State agency responsible for implementing the coal  
9       combustion residuals program in a State shall main-  
10      tain an approved program under section 4005(c) or  
11      an authorized program under section 3006.

12      “(c) PERMIT PROGRAM SPECIFICATIONS.—

13              “(1) IN GENERAL.—The specifications de-  
14      scribed in this subsection for a coal combustion re-  
15      siduals permit program are as follows:

16              “(A) The requirements of a State coal  
17      combustion residuals permit program shall be  
18      no less stringent than the requirements of the  
19      revised criteria.

20              “(B) Such coal combustion residuals per-  
21      mit program shall regulate the management of  
22      coal combustion residuals in surface impound-  
23      ments and other land-based units.

24              “(C) Each structure in such State shall be,  
25      in accordance with generally accepted engineer-

1           ing standards for the structural integrity of  
2           such structures, designed, constructed, and  
3           maintained to provide for containment of the  
4           maximum volumes of coal combustion residuals  
5           appropriate for the structure.

6           “(D) The State has the authority to in-  
7           spect structures and implement and enforce  
8           such coal combustion residuals permit program.

9           “(2) PROGRAM STRINGENCY.—The require-  
10          ments of a State coal combustion residuals permit  
11          program shall not be considered to be less stringent  
12          than the requirements of the revised criteria if one  
13          or more of the requirements of the revised criteria  
14          is not applied because such criteria is not appro-  
15          priate for the management of coal combustion re-  
16          siduals.

17          “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-  
18          EDY.—

19               “(1) IN GENERAL.—The Administrator shall  
20          provide to a State written notice and an opportunity  
21          to remedy deficiencies in accordance with paragraph  
22          (2) if the State—

23                       “(A) does not satisfy the notification re-  
24          quirement under subsection (b)(1);

1           “(B)(i) has not submitted a written certifi-  
2 cation under subsection (b)(2); and

3           “(ii) is not regulating structures in a man-  
4 ner that protects human health and the envi-  
5 ronment;

6           “(C) does not satisfy the maintenance re-  
7 quirement under subsection (b)(3); or

8           “(D) has satisfied the notification require-  
9 ment under subsection (b)(1) and has sub-  
10 mitted a written certification under subsection  
11 (b)(2), but, based upon information received by  
12 the Administrator, is not implementing a coal  
13 combustion residuals permit program.

14           “(2) CONTENTS OF NOTICE; DEADLINE FOR RE-  
15 SPONSE.—A notice provided under this subsection  
16 shall—

17           “(A) include—

18           “(i) findings of the Administrator de-  
19 tailing any applicable deficiencies in—

20           “(I) compliance by the State with  
21 the notification requirement under  
22 subsection (b)(1);

23           “(II)(aa) submission by the State  
24 of the written certification under sub-  
25 section (b)(2); and

1           “(bb) the ways in which the  
2           State is regulating structures such  
3           that human health and the environ-  
4           ment are not protected; and

5           “(III) compliance by the State  
6           with the maintenance requirement  
7           under subsection (b)(3); and

8           “(ii) for a State described in para-  
9           graph (1)(D), a request for the State to  
10          demonstrate that it is implementing a coal  
11          combustion residuals permit program; and

12          “(B) identify, in collaboration with the  
13          State, a reasonable deadline, which shall be not  
14          sooner than 6 months after the State receives  
15          the notice, by which the State shall—

16                 “(i) take actions to remedy the defi-  
17                 ciencies detailed under subparagraph  
18                 (A)(i); or

19                 “(ii) for a State described in para-  
20                 graph (1)(D), demonstrate that it is imple-  
21                 menting a coal combustion residuals per-  
22                 mit program.

23          “(e) IMPLEMENTATION BY ADMINISTRATOR.—The  
24          Administrator shall implement a coal combustion residuals  
25          permit program, the elements of which shall consist of the

1 revised criteria regarding design, groundwater monitoring,  
2 corrective action, closure, and post-closure, as appropriate  
3 for structures, for a State only in the following cir-  
4 cumstances:

5           “(1) If the Governor of such State notifies the  
6 Administrator under subsection (b)(1) that such  
7 State will not adopt and implement such a permit  
8 program.

9           “(2) If such State has received a notice under  
10 subsection (d) and fails, by the deadline identified in  
11 such notice under subsection (d)(2)(B)—

12                   “(A) to take actions to remedy the defi-  
13 ciencies detailed in such notice under subsection  
14 (d)(2)(A); or

15                   “(B) for a State described in subsection  
16 (d)(1)(D), to demonstrate that it is imple-  
17 menting a coal combustion residuals permit  
18 program.

19           “(3) If such State informs the Administrator,  
20 in writing, that such State will no longer implement  
21 such a permit program.

22           “(f) STATE CONTROL AFTER IMPLEMENTATION BY  
23 ADMINISTRATOR.—

24                   “(1) STATE CONTROL.—

1           “(A) NEW ADOPTION AND IMPLEMENTA-  
2           TION BY STATE.—For a State in which the Ad-  
3           ministrator is implementing a coal combustion  
4           residuals permit program under subsection  
5           (e)(1), the State may adopt and implement  
6           such a permit program by—

7                   “(i) notifying the Administrator that  
8                   the State will adopt and implement such a  
9                   permit program; and

10                   “(ii) not later than 6 months after the  
11                   date of such notification, submitting to the  
12                   Administrator a written certification under  
13                   subsection (b)(2).

14           “(B) REMEDYING DEFICIENT PERMIT PRO-  
15           GRAM.—

16                   “(i) IN GENERAL.—For a State in  
17                   which the Administrator is implementing a  
18                   coal combustion residuals permit program  
19                   under subsection (e)(2), the State may  
20                   adopt and implement such a permit pro-  
21                   gram by—

22                           “(I) remedying the deficiencies  
23                           detailed in the notice provided under  
24                           subsection (d)(2)(A)(i); or



1           “(II) for a State described in  
2 subsection (d)(1)(D), demonstrating  
3 that it is implementing a coal combus-  
4 tion residuals permit program.

5           “(ii) DEMONSTRATION.—

6           “(I) REMEDY OF DEFICIENCY.—

7           If such notice details a deficiency de-  
8 scribed in subsection  
9 (d)(2)(A)(i)(II)(bb), the State may  
10 remedy such deficiency only by dem-  
11 onstrating to the satisfaction of the  
12 Administrator that such State has  
13 remedied such deficiency.

14           “(II) REVIEW OF DETERMINA-  
15 TION.—If the Administrator deter-  
16 mines that a demonstration by a State  
17 under subclause (I) or clause (i)(II) is  
18 not sufficient, the State may obtain a  
19 review of such determination as if  
20 such determination was a final regula-  
21 tion for purposes of section 7006.

22           “(C) RESUMPTION OF IMPLEMENTATION  
23 BY STATE.—For a State in which the Adminis-  
24 trator is implementing a coal combustion re-  
25 siduals permit program under subsection (e)(3),

1 the State may adopt and implement such a per-  
2 mit program by—

3 “(i) notifying the Administrator that  
4 the State will adopt and implement such a  
5 permit program; and

6 “(ii) not later than 6 months after the  
7 date of such notification, submitting to the  
8 Administrator a written certification under  
9 subsection (b)(2).

10 “(2) SINGLE PERMIT PROGRAM.—If a State  
11 adopts and implements a coal combustion residuals  
12 permit program under this subsection, the Adminis-  
13 trator shall cease to implement the permit program  
14 implemented under subsection (e) for such State.

15 “(g) EFFECT ON DETERMINATION UNDER 4005(c)  
16 OR 3006.—The Administrator shall not consider the im-  
17 plementation of a coal combustion residuals permit pro-  
18 gram by the Administrator under subsection (e) in making  
19 a determination of approval for a permit program or other  
20 system of prior approval and conditions under section  
21 4005(c) or of authorization for a program under section  
22 3006.

23 “(h) CLOSURE.—If it is determined, pursuant to a  
24 coal combustion residuals permit program, that a struc-  
25 ture should close, the time period for the closure of such

1 structure shall be set forth, in a schedule, in a closure  
2 plan that takes into account the site-specific characteris-  
3 ties of the structure to be closed.

4 “(i) AUTHORITY.—

5 “(1) STATE AUTHORITY.—Nothing in this sec-  
6 tion shall preclude or deny any right of any State to  
7 adopt or enforce any regulation or requirement re-  
8 specting coal combustion residuals that is more  
9 stringent than a regulation or requirement under  
10 this section.

11 “(2) AUTHORITY OF THE ADMINISTRATOR.—

12 “(A) IN GENERAL.—Except as provided in  
13 subsection (e) of this section and section 6005  
14 of this title, the Administrator shall, with re-  
15 spect to the regulation of coal combustion re-  
16 siduals, defer to the States pursuant to this sec-  
17 tion.

18 “(B) IMMINENT HAZARD.—Nothing in this  
19 section shall be construed to affect the author-  
20 ity of the Administrator under section 7003  
21 with respect to coal combustion residuals.

22 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-  
23 bustion residuals permit program implemented under sub-  
24 section (e) by the Administrator shall not apply to the uti-

1 lization, placement, and storage of coal combustion residu-  
2 als at surface mining and reclamation operations.

3 “(k) DEFINITIONS.—In this section:

4 “(1) COAL COMBUSTION RESIDUALS.—The  
5 term ‘coal combustion residuals’ means—

6 “(A) the solid wastes listed in section  
7 3001(b)(3)(A)(i), including recoverable mate-  
8 rials from such wastes;

9 “(B) coal combustion wastes that are co-  
10 managed with wastes produced in conjunction  
11 with the combustion of coal, provided that such  
12 wastes are not segregated and disposed of sepa-  
13 rately from the coal combustion wastes and  
14 comprise a relatively small proportion of the  
15 total wastes being disposed in the structure;

16 “(C) fluidized bed combustion wastes;

17 “(D) wastes from the co-burning of coal  
18 with non-hazardous secondary materials pro-  
19 vided that coal makes up at least 50 percent of  
20 the total fuel burned; and

21 “(E) wastes from the co-burning of coal  
22 with materials described in subparagraph (A)  
23 that are recovered from monofills.

24 “(2) COAL COMBUSTION RESIDUALS PERMIT  
25 PROGRAM.—The term ‘coal combustion residuals

1 permit program’ means a permit program or other  
2 system of prior approval and conditions that is  
3 adopted by or for a State for the management and  
4 disposal of coal combustion residuals to the extent  
5 such activities occur in structures in such State.

6 “(3) STRUCTURE.—The term ‘structure’ means  
7 a landfill, surface impoundment, or other land-based  
8 unit which may receive coal combustion residuals.

9 “(4) REVISED CRITERIA.—The term ‘revised  
10 criteria’ means the criteria promulgated for munic-  
11 ipal solid waste landfill units under section 4004(a)  
12 and under section 1008(a)(3), as revised under sec-  
13 tion 4010(c).”.

14 **SEC. 3. 2000 REGULATORY DETERMINATION.**

15 Nothing in this Act, or the amendments made by this  
16 Act, shall be construed to alter in any manner the Envi-  
17 ronmental Protection Agency’s regulatory determination  
18 entitled “Notice of Regulatory Determination on Wastes  
19 from the Combustion of Fossil Fuels”, published at 65  
20 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel com-  
21 bustion wastes addressed in that determination do not  
22 warrant regulation under subtitle C of the Solid Waste  
23 Disposal Act (42 U.S.C. 6921 et seq.).

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